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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/772,596	02/06/2004	John E. Soukeras		5104

7590

01/09/2006

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EXAMINER

CHHABRA, ARUN S

ART UNIT

PAPER NUMBER

3764

DATE MAILED: 01/09/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

TJm

Office Action Summary	Application No. 10/772,596	Applicant(s) SOUKERAS, JOHN E.	
	Examiner Arun S. Chhabra	Art Unit 3764	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) 1-5 is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 6-10 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 6/28/2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____. |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claim 7 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The second plurality of ribs was never discussed in the original specification as the original disclosure only spoke of "ribs", not getting into detail about different pluralities of ribs. Thus the claim contains new matter and should be cancelled.

Claim Rejections - 35 USC § 103

Claims 6, 8, and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Polk (U.S. Patent Number 257,929) in view of Winkler et al. (U.S. Patent Number 6,752,746).

Polk discloses a club having a handle with two ends and an elongate configuration able to be gripped by a user. Polk shows the main body connecting to the handle and extending lengthwise having a cavity, referred to as 'b' inside of it. The cavity is able to receive weight and has both a bottom and side wall. The weights are elongate and concentric, and referred to as letters 'f', 'g' and 'h' in lines 19-31. The main

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body has a hollow, "generally frustoconical" section that has a smaller diameter end connected to the handle and a larger diameter end moving away from the handle. The generally "frustoconical" section then turns into a "generally cylindrical" section where weights are fit into the cavity. At the top of the main body is a cap, referred to as 'i' in lines 37-46, which is placed on top of the cavity so that the weights can maintain their position.

Thus, Polk discloses the claimed invention except for the ribs. Winkler teaches that it is known to use ribs as set forth in column 7, lines 40-65 and in Figure 2b as reference number 28 which serve as guides or grooves for supporting and guiding the support structure and the weights 30. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the exercising club as taught by Polk, with ribs as taught by Winkler, since such a modification would provide the exercising club with ribs for providing support and guidance to the supporting structure and weights being inserted into the body.

Claims 7 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Polk in view of Winkler as applied to claim 6 above, and further in view of Essen (US Patent Number 4,061,226).

Polk and Winkler disclose the claimed invention except for the second plurality of ribs and the recess in the end cap.

Essen teaches that it is known to use two plurality of ribs, one at the bottom of the cavity and one at the top near the cap, as set forth by reference numbers 24 and 36 and in column 2, lines 30-65 to engage and grip an element and prevent it from

movement. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the exercising club as taught by Polk in view of Winkler, with a second plurality of ribs at the bottom of the cavity as taught by Essen, since such a modification would provide the exercising club with a second set of ribs to engage and grip an element and prevent it from movement.

Essen also teaches that it is known to use a recess in an end cap as set forth in column 2, lines 30-65 and by reference number 35 to provide a hole or opening for an element to slide into so that it can be supported. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the exercising club as taught by Polk, with a recess as taught by Essen, since such a modification would provide the exercising club with a recess for providing an opening for an element to slide into to be supported by the structure.

Response to Amendment

The amendment filed 11/21/2005 is objected to under 35 U.S.C. 132(a) because it introduces new matter into the disclosure. 35 U.S.C. 132(a) states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows: The second plurality of ribs extending from the bottom of the cavity mentioned in claim 7.

Applicant is required to cancel the new matter in the reply to this Office Action.

Response to Arguments

Applicant's arguments with respect to claims 6-10 have been considered but are moot in view of the new ground(s) of rejection.

Polk discloses an exercise club with a main body having "generally frustoconical and generally cylindrical" sections, a handle, and a cavity extending within the main body for the placement of weights. Winkler in column 7, lines 40-65 and in Figures 2a and 2b shows how the weights 30 can be added into the receptacle and be held in place, supported and stabilized by the ribs or grooves 28. Essen shows an end cap with a recess and also describes a second plurality of ribs on the bottom of the device to hold an element in place.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Arun S. Chhabra whose telephone number is 571-272-7330. The examiner can normally be reached on M-F 8:30-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Steve Cronin can be reached on 571-272-4536. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Stephen K. Cronin
Primary Examiner